

Amendment and Response

Applicant: Patrick T. Jouppi et al.

Serial No.: 10/656,844

Filed: September 5, 2003

Docket No.: G180.151.101 (6280US)

Title: RECLOSEABLE CARTON

IN THE DRAWINGS

Please replace FIG. 6 with new FIG. 6 shown in the attached Replacement Sheet. Attachments include one Replacement Sheet including changes to FIG. 6 and one Annotated Sheet showing changes to FIG. 6 in red.

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REMARKS

This is responsive to the Non-Final Office Action mailed July 27, 2005. The Examiner rejected claims 18 and 19 under 35 U.S.C. §112, first paragraph, as failing to comply with the written description and the enablement requirements. Claims 10, 18, and 19 were also rejected under 35 U.S.C. §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Claims 1-6, 8, 9-11, 15, 18-22, 25, and 26 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,431,333 ("Lorenz") or German Patent No. DT-2,703,432-A1 ("DT '432"). Claims 1-6, 8-10, 11, 14, 15, 20-22, and 25-27 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Design Patent No. 889,109 ("Davidson"). Claims 1-6, 8-11, 15, 16, 20-22, 25, and 26 were rejected under 35 U.S.C. §102(b) as being anticipated by German Patent No. DT-3,834,083-C1 ("DT '083"). Claims 1-6, 8-10, 14, 15, 17, 20-22, and 25-27 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Design Patent No. 281,354 ("Edwards"). Claims 7, 12, 13, and 23 were rejected under 35 U.S.C. §103(a) as being unpatentable over Davidson, Edwards, Lorenz, DT '083, or DT '432. Claim 24 was rejected under 35 U.S.C. §103(a) as being unpatentable over the prior art as applied to claim 23 above, and further in view of U.S. Patent No. 6,676,010 ("Roseth").

With this Response, claims 1, 4, 6, 10, 18, 20, and 23 have been amended; claims 24 and 28 cancelled; and newly presented claim 29 added. Claims 1-23, 25-27, and 29 remain pending in the application and are presented for consideration and allowance.

Support for the Amendment to FIG. 6

As described in greater detail below, it is believed that the exact proportions of FIG. 6 are not limiting and the changes made are supported by the specification and figures according to the understanding of one of ordinary skill in the art. As such, the proportions of FIG. 6 have been modified in an effort to further clarify the application and expedite prosecution.

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Support for the Amendments

Support for the amendments to claims 1 and 20 can be found throughout the specification, for example, at FIG. 1 and at pg. 7, ll. 20-29. With reference to that exemplary portion of the specification, it should be understood that a first section, a second section, and a third section are described, including tapered angles associated with such sections. Additionally, at pg. 8, ll. 16-19, a maximum lateral distance between the first and third sections 100, 104 is designated as a lateral length of the tuck slot. This, in combination with the tapered angles, descriptions of first, second, and third sections, as well as the figures, fully support the limitations of claims 1 and 20 as amended. The remaining claim amendments are to correct typographical, grammatical, and/or antecedent-type errors.

Objection to the Specification

The specification stands objected to according to the informality that page 15, lines 10 and 11 are grammatically unclear. The paragraph beginning at page 15, line 9 has been amended in an effort to remedy any typographical/grammatical errors. The paragraph beginning at page 5, line 9 has also been amended in an effort to remedy typographical/grammatical errors. Accordingly, it is believed that the specification is no longer objectionable. Withdrawal of the objection is respectfully requested.

35 U.S.C. §§112, First and Second Paragraph Rejections

Claims 18 and 19 stand rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement according to the following grounds for rejection:

The embodiment of FIG. 6 as described on pages 12 and 13 of the specification is unclear with respect to how the tab 214 will interlock with the slot 212 when the carton is formed. It would appear that the tab 214 would be located adjacent the fold line 226 and that the slot 212 would be located adjacent the fold line 252. The specification provides no description of how the interlock and the carton formed from the blank of FIG. 6 is made.

NFOA at para. 4.

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The Section 112, first paragraph, written description standard requires that one having ordinary skill in the art would reasonably understand that the applicants were in possession of the claimed invention. MPEP § 2163(I). As a preliminary matter, original claims can constitute their own description, as it is “well accepted that a satisfactory description may be in the claims or any other portion of the originally filed specification.” MPEP §2163(I). Furthermore, “[t]here is a presumption that an adequate written description of the claimed invention is present when the application is filed.” MPEP §2163(I)(A). Indeed, “rejection of an original claim for lack of written description should be rare.” MPEP §2163.03. Finally, when interpreting the figures of an application, “the proportions of features in a drawing are not evidence of actual proportions when drawings are not to scale.” MPEP §2125.

With the above tenants in mind, any incongruity presented by the dimensions of FIG. 6 is at least outweighed by (1) the presumption of an adequate description; (2) the remainder of the application, including the claims, detailed description, and other figures; and (3) the understanding that FIG. 6 does not show actual proportions.

The presumption of an adequate description can be rebutted if the Examiner carries the burden of showing “the claims require an essential or critical feature which is not adequately described in the specification and which is not conventional in the art or known to one of ordinary skill in the art.” MPEP §2163(I)(A). However, in the case at hand, the remainder of the application and level of understanding afforded one of ordinary skill in the art defeat any such argument. The Office Action rejects claims 18 and 19 indicating that it is unclear “how the tab 214 will interlock with the slot 212.” As a preliminary matter, claims 18 and 19 should not be read as being limited in scope to FIG. 6. Along these lines, the Examiner’s attention is respectfully directed, for example, to page 15, lines 9-20. In particular, this portion of the detailed description indicates that “the resultant carton (not shown) formed by the blank 200 is similar to the carton 12 ... As part of a closure operation, the second closure flap 210 is directed on to the first closure flap 208 such that the tab 214 nests within the tuck slot 212.” In this manner, the description is not only directly informative as to how the closure flaps 208, 210, the tab 214, and the tuck slot 212 interrelate, but also directs the reader to refer to a remainder of the specification, including the basic operation of carton 12. Upon referring to the description of

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carton 12, including FIGS. 3 and 4, one having ordinary skill in the art is provided even further guidance as to how closure flaps associated with the claimed invention are transitioned between open and closed states. Furthermore, one of ordinary skill in the art would upon reading the detailed description associated with FIGS. 1-5 have a basic, working understanding of how all closure flaps operate and how widths of closure flaps can effect such interaction, even without foreknowledge of the tab 214 and tuck slot 212 of FIG. 6.

Finally, with respect to the proportions of the drawings, the Federal Circuit has clarified that “it is well established that patent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes if the specification is completely silent on the issue.” *Hockerson-Halberstadt, Inc. v. Avia Group Int’l, Inc.*, 55 USPQ2d 1487, 1491 (Fed. Cir. 2000). The present application never indicates that the drawings are “to scale” and thus it is improper to rely on the exact proportions of FIG. 6 as presenting any incongruity with the specification. Thus, any argument that an exact measurement of the proportions of FIG. 6 gives rise to confusion is improper. Indeed, even an argument that the general proportions of FIG. 6 are confusing is mitigated by the fact that one of ordinary skill understands that the drawings are not to scale. See *Hockerson-Halberstadt, Inc.*, 55 USPQ2d at 1491 (citing MPEP §2125).

For at least the reasons described above, one having ordinary skill in the art would reasonably conclude that the applicants were in possession of the limitations presented in claims 18 and 19 in light of the presumption of an adequate description, the interpretation one having ordinary skill in the art would give the remainder of the application, and the fact that one of ordinary skill in the art would understand that FIG. 6 does not necessarily show exact proportions. As such, the rejection of claims 18 and 19 under 35 U.S.C. §112, first paragraph’s written description requirement is fully traversed. Withdrawal of the rejection and notice to that effect is respectfully requested.

Claims 18 and 19 also stand rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement according to the following grounds for rejection:

The specification provides no description of how a box is made from the blank of FIG. 6 where the tuck slot 212 is adapted to receive the tab 214 as part of the reclosure operation.

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NFOA at para. 5.

The test of enablement is whether one having ordinary skill in the art would be required to undertake undue experimentation in order to make or use the invention. MPEP §2164.01. However, “[a] patent need not teach, and preferably omits, what is well-known in the art.” *Id.* A non-exclusive list of factors for determining whether any necessary experimentation is undue includes the level of one of ordinary skill, the level of predictability in the art, the amount of direction provided by the inventor, and the quantity of experimentation needed to make or use the invention based on the content of the disclosure. MPEP §2164.01(A). While written description, enablement, and definiteness are each separate requirements under 35 U.S.C. § 112, the clarifying statements presented above in association with the written description requirement demonstrate that each of the above-referenced factors weigh in favor of an enabling disclosure with respect to claims 18 and 19.

For example, one having ordinary skill in the art is readily afforded, upon reading the description associated with FIGS. 1-5, a working understanding of how most slots and tabs interact in a broad and general sense. Additionally, the specification, when read as a whole, provides extensive guidance as to the particulars of a closure operation according to various embodiments, including for example, how the tuck slot 212 is adapted to selectively receive the tab 214 in light of FIGS. 3 and 4. Furthermore, with the understanding that FIG. 6 does not provide exact dimensions, any experimentation that might be required, for example as to the width of the closure flaps 208, 210, respectively, would be minimal. In sum, with a general understanding of how tabs and slots work and the specification in hand, one having ordinary skill in the art would be sufficiently enabled to make and use the claimed invention according to claims 18 and 19 without undue experimentation.

For at least the reasons described above, it is believed that the rejection of claims 18 and 19 under 35 U.S.C. §112, first paragraph’s enablement requirement is fully traversed. Withdrawal the rejection of claims 18 and 19 on such grounds is respectfully requested.

Claims 18 and 19 also stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite according to the grounds that “[c]laims 18 and 19 are unclear with respect to how the

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construction as defined in these claims, i.e. the FIG. 6 embodiment[,] allows interlocking of the tab and slot.” *NFOA* at para. 6.

In order to meet the indefiniteness standard, a claim must satisfy two requirements: 1) it must set forth what the Applicant regards as the invention and 2) the claims must particularly point out and distinctly define the metes and bounds of the subject matter claimed. MPEP §2171. In evaluating the first requirement, the MPEP advises that “a rejection based on the failure to satisfy this [first] requirement is appropriate only where Applicant has stated somewhere other than the application as filed, that the invention is something different than what is defined by the claims.” MPEP §2172(I) (emphasis added). As the grounds for rejecting claims 18 and 19 rest on FIG. 6 of the application, it is believed that the first requirement is not in issue. Therefore, the discussion properly turns to the second requirement.

Definiteness of claim language must be analyzed, not in a vacuum, but in light of: “(A) The content of the particular application disclosure; (B) The teachings of the prior art; and (C) The claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made.” MPEP §2173.02.

As outlined in the previous sections, the actual proportions of FIG. 6 should not be given undue weight, as FIG. 6 has never been designated as “to scale.” Furthermore, the “content of the application disclosure” includes description and figures demonstrating how a tuck slot can be adapted to selectively receive a tab. In this manner, the application disclosure is sufficient to ensure the scope of the claims (1) is clear so that the public can be informed to the boundaries of what constitutes infringement of the patent and (2) provides a clear measure of what Applicant regards as the invention. This conclusion is further buttressed by the guidance of the Federal Circuit that one of ordinary skill would view FIG. 6 as not showing exact proportions. Furthermore, the prior art could be relied upon to some extent to gain a general overall understanding of how tabs and tuck slots interact and what complementary carton proportions might be required to allow such interaction.

For at least the reasons described above, one having ordinary skill in the art would be informed as to what constitutes infringement of the claims, regardless of any potentially perceived ambiguity resulting from FIG. 6. As such, it is believed that the rejection of claims 18

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and 19 under 35 U.S.C. §112, second paragraph's indefiniteness requirement is fully traversed. Withdrawal of the rejection of claims 18 and 19 on such grounds is respectfully requested.

Finally, claim 10 also stands rejected under 35 U.S.C. §112, second paragraph, as being indefinite under the grounds that "[c]laim 10 is unclear with respect to which sections are being claimed as offset from one another." *NFOA* at para. 6. Claim 10 has been amended to remove a typographical error, which it is believed will also remedy the grounds for rejection. As such, the rejection of claim 10 on such grounds is believed fully traversed. Withdrawal of the rejection is respectfully requested.

35 U.S.C. §§102, 103 Rejections

Independent claims 1 and 20 stand rejected under 35 U.S.C. §102(b) as being anticipated by either Lorenz, DT '432, Davidson, DT '083, or Edwards. Independent claims 1 and 20 as amended relate, in part, to a first closure flap including a central region forming a tuck slot that is open relative to a leading edge, the leading edge at the central region defining a first, a second, and a third section, the first and third sections tapering at a taper angle to the second section such that the second section defines a minimum width of the tuck slot. Those claims also relate, in part, to a second closure flap forming a tab including opposing side portions tapering at a taper angle to a central portion, wherein the taper angle of the tuck slot is greater than the taper angle of the tab such that the tuck slot is adapted to selectively receive the tab. For at least the reasons described below, none of the cited references teach or suggest such limitations.

The Lorenz, DT '432, Davidson, and Edwards, references specifically teach away from the limitations of claims 1 and 20 as amended. For example, with reference to Lorenz, FIG. 1 shows the wall 16 having an undercut 98 formed by projections 100 and 102 on opposite sides of the undercut 98. *Lorenz* at col. 3, ll. 45-52. Clearly, the undercut 98 does not teach or suggest a second section defining a minimum width of the tuck slot as required by the limitations of independent claims 1 and 20 as amended. In particular, Lorenz teaches a top front wall 60 having a substantially dovetail projection or tongue 112 that is adapted to extend a full length of support surface 104 of undercut 98. *Lorenz* col. 4, ll. 26-31. In this manner, the tongue 112 is essentially in face-to-face contact with the edge 104 of the undercut 98 to lock the box in a

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closed position. *Lorenz* at col. 5, ll. 39-40. By teaching that the undercut 98 actually defines a maximum width to allow secure closure by interlocking with the tongue 112, *Lorenz* actually teaches away from a second section defining a minimum width of a tuck slot as required by the limitations of independent claims 1 and 20 as amended.

DT '432 similarly teaches away from the limitations of claims 1 and 20 as amended. With reference to FIGS. 2, 3, and 8, it can be understood that noses 37 extend inwardly at edges of recess 36 in order to act in concert with locking lug 21. Locking lug 21 is essentially hooked into the noses 37. In particular, a middle portion of the recess 36 defines a maximum width of the recess. Thus, DT '432 teaches away from the limitations of independent claims 1 and 20 as amended relating to a second slot defining a minimum width of a tuck slot.

Turning now to Davidson, FIG. 2 illustrates flap A6 with notch A14 at inner margin A10. The notch A14 is formed by cutting through margin A10 along curve lines A15. As shown, notch A14 defines a maximum width at the central part of notch A14. *Davidson* at pg. 1, col. 2, ll. 96-110. In this manner, flaps A4 and A6 can be engaged or interlocked via the tongue and notch such that the dovetail shape of each engages the other. *Davidson* at pg. 1, col. 2, ll. 87-96. Referring to FIGS. 10 and 11 of Davidson, other embodiments of the flaps A4 and A6 are shown having no taper and extending perpendicular to margin A9, A19. In the construction of FIGS. 10 and 11, the tongue and notch do not interlock, but instead serve the purpose of ensuring a box is aligned in a rectangular form when the flaps are folded together. *Davidson* at pg. 2, col. 2, l. 36 – pg. 1, col. 6. Therefore, the embodiments of Davidson also teach away from the limitations of independent claims 1 and 20 as amended.

Turning now to Edwards, FIGS. 1 and 2 illustrate another similar interlocking structure to those described above, tapered such that the central portion of the slot defines a maximum width of slot. Therefore, Edwards also teaches away from the limitations of independent claims 1 and 20 as amended, as demonstrated with even greater force when viewed in light of the other references described above.

In sum, each of the references described above teach away from the limitations of independent claims 1 and 20 relating to a second section that defines a minimum width of a tuck slot.

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Independent claims 1 and 20 as amended also include limitations relating to a taper angle of a tuck slot being greater than a taper angle of a tab. Prior to amendment, dependent claim 24 included limitations similar to those now included in independent claims 1 and 20 as amended. Dependent claim 24 stands rejected under 35 U.S.C. §103(a) as being unpatentable over any one of Lorenz, DT '432, Davidson, DT '083, or Edwards, and further in view of Roseth. As described above, each of Lorenz, DT '432, Davidson, and Edwards teach away from the limitations of independent claims 1 and 20 as amended. Therefore, it is believed that independent claims 1 and 20 as amended present patentably distinct matter from those references for at least such reasons. Furthermore, for at least the reasons described below, independent claims 1 and 20 present patentably distinct material over DT '083 and Roseth.

Three criteria must be satisfied to establish a *prima facie* case of obviousness. First, the Examiner must show that some objective teaching in the prior art or some knowledge generally available to one of ordinary skill in the art would teach, suggest, or motivate one to modify a reference or combine the teachings of multiple references. Second, there must be a reasonable expectation of success in combining references. Finally, the prior art reference must teach or suggest all of the limitations of the rejected claims. MPEP §2142. In rejecting dependent claim 24, the Examiner cited the motivation of combining Roseth with any of the other references to “facilitate a more secure interlock of the tab and slot.” *NFOA* at pg. 7, para. 14. However, Roseth does not teach or suggest such a motivation. Roseth only indicates that the “locking mechanism 64 may slidably engage with locking slot mechanism 62. One or more of these engagements act to maintain closure so that food placed within the cavity will be retained.” *Roseth*, col. 2, l. 67 – col. 3, l. 3. However, upon a good faith review of Roseth, Roseth does not teach or suggest that making a taper angle of a slot greater than a taper angle of a tab would facilitate a more secure interlock of a tab and a slot. Therefore, for at least this reason, a *prima facie* case of obviousness has not been established.

Furthermore, in terms of a reasonable expectation of success, Roseth specifically addresses a locking slot mechanism 62 that is closed and does not otherwise define an open area. In particular, Roseth provides no guidance as to how the closed locking slot mechanism 62 would interact with the central oblong recess of DT '083, much less how such a combination

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would accomplish the use/advantage of DT '083 of incorporating end flaps which interlock to provide additional stability. Without any guidance as to how to combine such structures, one having ordinary skill in the art would not have a reasonable expectation of success in combining the Roseth and DT '083 references. Thus, for at least this additional reason, a *prima facie* case of obviousness has not been established. Finally, none of the cited references alone teach or suggest all of the limitations of independent claims 1 and 20 as described above.

As the cited references do not teach or suggest the limitations of independent claims 1 and 20 as amended, either alone or in combination, the rejection of independent claims 1 and 20 is believed fully traversed. As such, their allowance and notice to that effect is respectfully requested.

Claims 2-19, 21, 23, 25-27, and 29 depend, in some form, from independent claims 1 and 20 as amended. Therefore, for at least the reasons described above, they are believed to present patentably distinct material from the cited references. As such, their rejection is believed fully traversed as well. Allowance of those dependent claims, and notice to that effect is respectfully requested.

CONCLUSION

In view of the above, Applicant respectfully submits that pending claims 1-23, 25-27, and 29 are in form for allowance and are not taught or suggested by the cited references. Therefore, reconsideration and withdrawal of the rejections and allowance of claims 1-23, 25-27, and 29 is respectfully requested.

No fees are required under 37 C.F.R. 1.16(b)(c). However, if such fees are required, the Patent Office is hereby authorized to charge Deposit Account No. 50-0471.

The Examiner is invited to contact the Applicant's representative at the below-listed telephone numbers to facilitate prosecution of this application.

Any inquiry regarding this Amendment and Response should be directed to either John A. O'Toole at Telephone No. (763) 764-2422, Facsimile No. (763) 764-2268 or Timothy A. Czaja at Telephone No. (612) 573-2004, Facsimile No. (612) 573-2005. In addition, all correspondence should continue to be directed to the following address:

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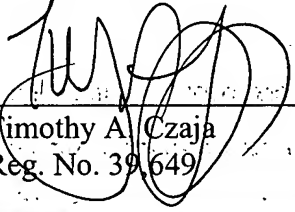
Respectfully submitted,

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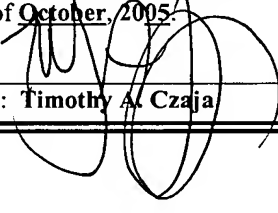
Date: October 27, 2005
TAC:jmc



Timothy A. Czaja
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CERTIFICATE UNDER 37 C.F.R. 1.8:

The undersigned hereby certifies that this paper or papers, as described herein, are being deposited in the United States Postal Service, as first class mail, in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 27th day of October, 2005.

By 
Name: Timothy A. Czaja

APPLICANT: PATRICK T. JOUPPI ET AL.
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 TITLE: RECLOSABLE CARTON

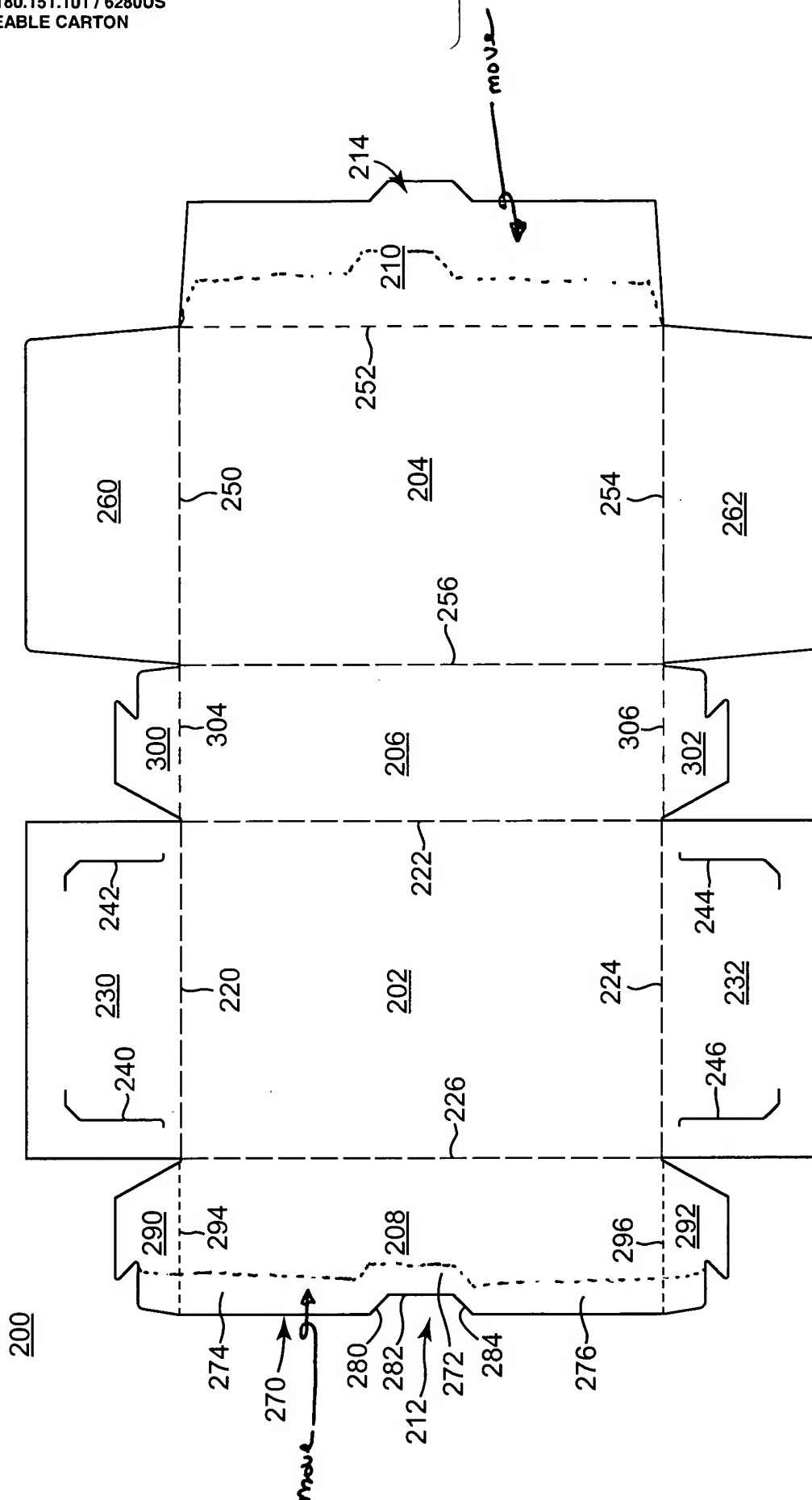


Fig. 6